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Attorneys for Plaintiff,

RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CA. S.J.

E-FILING

ADR

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

JOEL CABRERA

Plaintiff,

vs.

BAY AREA CREDIT SERVICES

Defendant.

Case: 08-03761 HRL

VERIFIED COMPLAINT AND DEMAND  
FOR JURY TRIAL

(Unlawful Debt Collection Practices)

COMPLAINT

COMES NOW the Plaintiff, JOEL CABRERA ("Plaintiff"), by and through his attorneys, KROHN & MOSS, LTD., and for Plaintiff's Complaint against Defendant, BAY AREA CREDIT SERVICES, alleges and affirmatively states as follows:

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to

1 promote consistent State action to protect consumers against debt collection abuses. (15 U.S.C.  
2 1692(a) – (e)).

3 2. The California legislature has determined that the banking and credit system and  
4 grantors of credit to consumers are dependent upon the collection of just and owing debts and  
5 that unfair or deceptive collection practices undermine the public confidence that is essential to  
6 the continued functioning of the banking and credit system and sound extensions of credit to  
7 consumers. The Legislature has further determined that there is a need to ensure that debt  
8 collectors exercise this responsibility with fairness, honesty and due regard for the debtor's rights  
9 and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.  
10 (Cal. Civ. Code §1788.1(a) – (b)).

11 3. Plaintiff, through Plaintiff's attorneys, bring this action to challenge the actions  
12 of BAY AREA CREDIT SERVICES (hereinafter "Defendant") with regard to attempts by  
13 Defendant, a debt collector, to unlawfully and abusively collect a debt allegedly owed by  
14 Plaintiff, and this conduct caused Plaintiff damages.

15 4. For the purposes of this Petition, unless otherwise indicated, "Defendant"  
16 includes all agents, employees, officers, members, directors, heirs, successors, assigns,  
17 principals, trustees, sureties, subrogees, representatives and insurers of Defendant named in this  
18 caption.

#### 19 JURISDICTION AND VENUE

20 5. Jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states that  
21 such actions may be brought and heard before "any appropriate United States district court  
22 without regard to the amount in controversy" and 28 U.S.C. 1367 grants this court supplemental  
23 jurisdiction over the state claims contained therein.

24 6. Because Defendant maintains and conducts business in the state of California,  
25 ~~personal jurisdiction is established.~~

1 7. Venue is proper pursuant to 28 U.S.C. 1391(b)(1).

2 8. Declaratory relief is available pursuant to 28 U.S.C. 2201 and 2202.

3 **PARTIES**

4 9. Plaintiff is a natural person who resides in the City of Miami, County of  
5 Miami-Dade, State of Florida and is obligated or allegedly obligated to pay a debt and is a  
6 "consumer" as that term is defined by 15 U.S.C. 1692a(3).

7 10. Plaintiff is a natural person from whom a debt collector sought to collect a  
8 consumer debt which was due and owing or alleged to be due and owing from Plaintiff and is a  
9 "debtor" as that term is defined by California Civil Code § 1788.2(h).

10 11. Plaintiff is informed and believes, and thereon alleges, that Defendant is a  
11 national company with a business headquarters in the City of Antioch, County of Contra Costa,  
12 State of California.

13 12. Plaintiff is informed and believes, and thereon alleges, that Defendant uses  
14 instrumentalities of interstate commerce or the mails in any business the principal purpose of  
15 which is the collection of any debts, or who regularly collects or attempts to collect, directly or  
16 indirectly, debts owed or due or asserted to be owed or due another and is a "debt collector" as  
17 that term is defined by 15 U.S.C. § 1692a(6).

18 13. Plaintiff is informed and believes, and thereon alleges, that Defendant is not a  
19 firm of attorneys or counselors at law and is a company who, in the ordinary course of business,  
20 regularly, on behalf of itself or others, engages in debt collection as that term is defined by  
21 California Civil Code § 1788.2(b), and is a "debt collector" as that term is defined by California  
22 Civil Code § 1788.2(c).

23 **FACTUAL ALLEGATIONS**

24 14. Defendant has been making constant and continuous contact Plaintiff seeking and  
25 demanding payment for an alleged debt. (See Exhibit A).

1 15. Defendant places multiple collection calls a day nearly every day. (See Exhibit  
2 A).

3 16. Plaintiff has spoken to Defendant's representatives and informed them to stop  
4 placing such a constant amount of calls.

5 17. Defendant continues to place continuous collection calls despite this.

6 18. Defendant will place calls to Plaintiff and either hang up the line or leave  
7 messages in which Defendant does not identify itself.

8 19. In July of 2008, Plaintiff retained KROHN & MOSS, LTD., to be his legal  
9 representation in the present matter.

10 **COUNT I**

11 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT,**  
12 **(FDCPA), 15 U.S.C. § 1692 et seq.**

13 20. Plaintiff repeats, reallages and incorporates by reference all of the foregoing  
14 paragraphs.

15 21. Defendant **violated the FDCPA**. Defendant's violations include, but are not  
16 limited to the following:

17 a). Defendant violated the FDCPA § 1692c(a)(1) when Defendant, through its agents  
18 and employees, communicated with Plaintiff at an unusual times.

19 b). Defendant violated the FDCPA § 1692d(5) when Defendant, through its agents  
20 and employees, excessively placed collection calls and caused Plaintiff's phone to ring  
21 excessively.

22 c). Defendant violated the FDCPA § 1692e(11) when Defendant, through its agents,  
23 employees and legal counsel, failed to properly identify itself as a debt collector and failed to  
24 state that all information sought would be used for that purpose.

22. As a consequence of Defendant's foregoing actions, Plaintiff has suffered from stress, anxiety, and anger. (See Exhibit B).

**COUNT II**

**DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (RFDCPA), Cal. Civ. Code § 1788 et seq.**

23. Plaintiff repeats, realleges and incorporates by reference all of the foregoing paragraphs.

24. Defendant **violated the RFDCPA**. Defendant's violations include, but are not limited to the following:

a). Defendant violated the RFDCPA § 1788.11(b) when Defendant, through its agents, employees and legal counsel, failed to properly identify itself as a debt collector.

b). Defendant violated the RFDCPA § 1788.11(d) when Defendant, through its agents and employees, placed collection calls to Plaintiff and caused his phone to ring repeatedly and continuously as to annoy him.

c). Defendant violated the RFDCPA § 1788.11(e) when Defendant, through its agents and employees, communicated with Plaintiff by telephone at such a high frequency as to constitute harassment.

d). Defendant violated the RFDCPA § 1788.17 when Defendant, through its agents and employees, continuously failed to comply with the statutory regulations contained within the FDCPA, 15 U.S.C. § 1692 *et seq.*

25. As a consequence of Defendant's foregoing actions, Plaintiff has suffered from stress, anxiety and anger. (See Exhibit B).

1 **WHEREFORE**, Plaintiff respectfully prays that judgment be entered against the  
2 Defendant for the following:

- 3 26. Declaratory judgment that the Defendant's conduct violated the FDCPA.  
4 27. Declaratory judgment that the Defendant's conduct violated the RFDCPA.  
5 28. Actual damages.  
6 29. Statutory damages pursuant to the FDCPA, 15 U.S.C. 1692k.  
7 30. Statutory damages pursuant to the RFDCPA, Cal. Civ. 1788.30(b).  
8 31. Costs and reasonable attorney's fees pursuant to the FDCPA, 15 U.S.C. 1692k and  
9 the RFDCPA, Cal Civ. 1788.30(c).  
10 32. Any other relief that this court deems to be just and proper.

11  
12 RESPECTFULLY SUBMITTED,

13 DATED: July 24, 2008

KROHN & MOSS, LTD.

14  
15 By: 

16 Nicholas J. Bontrager  
17 Attorney for Plaintiff  
18  
19  
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21

22 **DEMAND FOR JURY TRIAL**

23 PLEASE TAKE NOTICE that Plaintiff, JOEL CABRERA, hereby demands trial by jury  
24 in this action.  
25

**VERIFICATION OF COMPLAINT AND CERTIFICATION**

STATE OF CALIFORNIA)

Plaintiff, JOEL CABRERA, says as follows:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, JOEL CABRERA, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 7/29/08  
JOEL CABRERA,  
Plaintiff

VERIFIED COMPLAINT

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**EXHIBIT A**

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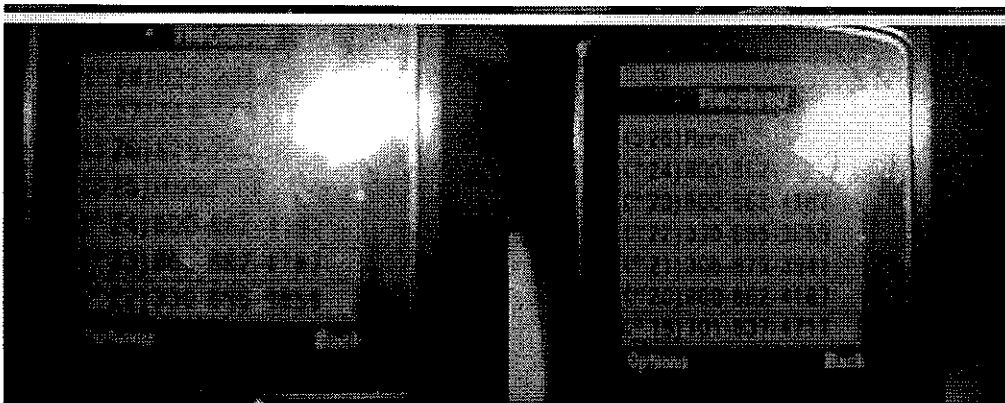
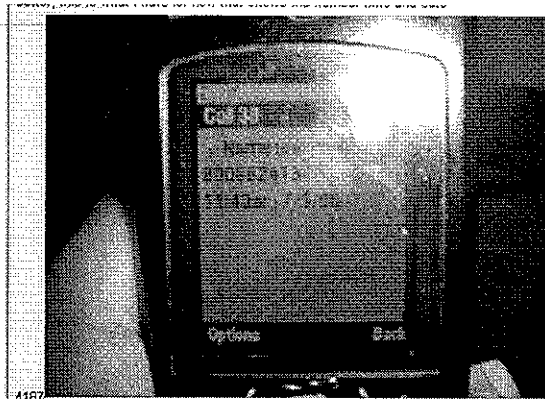
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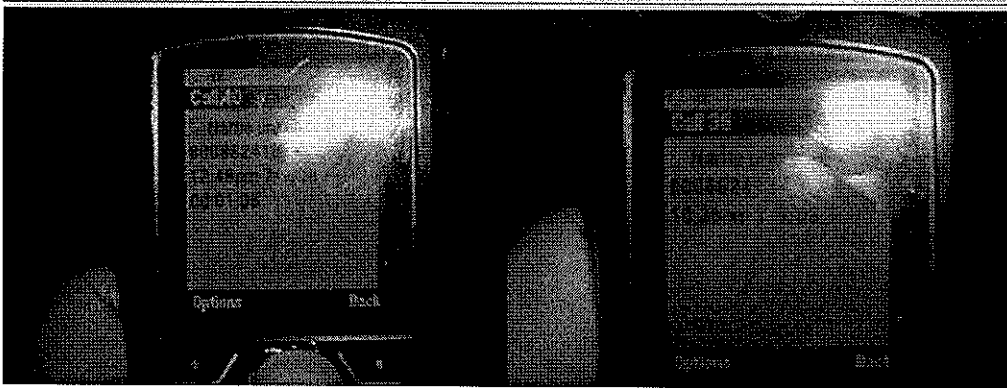
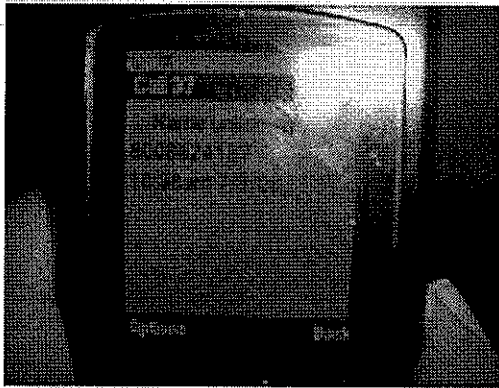
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**EXHIBIT B**

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I have suffered from the following due to, or made worse by, the actions of the Defendant's debt collection activities:

- |                                                               |            |    |
|---------------------------------------------------------------|------------|----|
| 1. Sleeplessness                                              | <u>YES</u> | NO |
| 2. Fear of answering the telephone                            | <u>YES</u> | NO |
| 3. Nervousness                                                | <u>YES</u> | NO |
| 4. Fear of answering the door                                 | <u>YES</u> | NO |
| 5. Embarrassment when speaking with family or friends         | <u>YES</u> | NO |
| 6. Depressions (sad, anxious, or "empty" moods)               | <u>YES</u> | NO |
| 7. Chest pains                                                | <u>YES</u> | NO |
| 8. Feelings of hopelessness, pessimism                        | <u>YES</u> | NO |
| 9. Feelings of guilt, worthlessness, helplessness             | <u>YES</u> | NO |
| 10. Appetite and/or weight loss or overeating and weight gain | <u>YES</u> | NO |
| 11. Thoughts of death, suicide or suicide attempts            | <u>YES</u> | NO |
| 12. Restlessness or irritability                              | <u>YES</u> | NO |
| 13. Headache, nausea, chronic pain or fatigue                 | <u>YES</u> | NO |
| 14. Negative impact on my job                                 | <u>YES</u> | NO |
| 15. Negative impact on my relationships                       | <u>YES</u> | NO |

Other physical or emotional symptoms you believe are associated with abusive debt collection activities:

high blood pressure (I SUFFER  
FROM HIGH BLOOD PRESSURE SO THOSE  
CALLS DO NOT HELP IMPROVE THAT  
PROBLEM SPECIALLY HAVING MY PHONE GO  
OFF ALL THE TIME)

Pursuant to 28 U.S.C. § 1740(2), I hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 7/29/08

  
Signed Name

JOSE L. CABRERA  
Printed Name

JS 44 (Rev. 12/07) (and rev 1-16-08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

Joel Cabrera

**DEFENDANTS**

Bay Area Credit Services

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Krohn & Moss, Ltd.; Nicholas J. Bontrager  
5055 Wilshire Blvd, Suite 300  
Los Angeles, CA 90036  
(323) 988-2400

Attorneys (If Known)

**C08 03761 HRL****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |                                         |                            |                            |                                                               |                            |                            |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation                                                | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health		<input checked="" type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 690 Other	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 370 Other Fraud	<b>LABOR</b>	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
		<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 790 Other Labor Litigation	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>IMMIGRATION</b>	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainees		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other			
	<input type="checkbox"/> 440 Other Civil Rights			
	<b>PRISONER PETITIONS</b>			
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	<b>Habeas Corpus:</b>			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 USC 1692 et seq.  
Brief description of cause:  
Unlawful and abusive debt collection practices.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION DEMANDS UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:  
**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE"

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)**

☐ SAN FRANCISCO/OAKLAND ☒ SAN JOSE

DATE

August 1, 2008

SIGNATURE OF ATTORNEY OF RECORD